

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMAN JAMAL DURANT,

Defendant and Appellant.

B266164

(Los Angeles County
Super. Ct. No. PA078029)

APPEAL from a judgment of the Superior Court of Los Angeles County, David W. Stuart, Judge. Affirmed.

Julie Schumer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen, and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Arman J. Durant refused to accept that his ex-girlfriend Victoria Garcia no longer wanted to have a relationship with him. After she moved to Wisconsin, he harassed and physically attacked Garcia's friend Wade Riff, trying to compel Riff to give him Garcia's contact information. A jury convicted Durant of several crimes against Riff, including stalking, criminal threats, burglary, and assault by means likely to cause great bodily injury. He raises several challenges to his convictions. We affirm.

FACTS AND PROCEEDINGS BELOW

Durant and Garcia dated for approximately three weeks in May and June of 2012. Garcia ended the relationship with a phone call. On the day she broke up with him, Durant rode his bicycle outside Garcia's house in Mission Hills for hours. In order to avoid him, Garcia did not return home that day. In the wake of the breakup, Durant called and texted Garcia frequently. Although she told him she did not want to talk to him, Durant often called more than once a day. In September, Garcia moved to Wisconsin and did not give Durant her new contact information.

After Garcia moved, Durant continued contacting her through her Instagram and Twitter accounts, despite her requests for him to leave her alone. He also tried to get in touch with her by contacting her Facebook friends and telling them that there was an emergency and that Garcia needed to get in touch with him.

In June 2013, a full year after Garcia broke up with him, Durant called Garcia's friend Riff. Until this point, Riff had never had any contact with Durant. Riff lived in an apartment in Mission Hills with a roommate, the 68-year-old mother of a friend of his. He asked Riff for Garcia's contact information, but Riff knew that Garcia did not want Durant to contact her. When Riff refused, Durant threatened to come to his house, tie up his "mom" (presumably referring to Riff's roommate) and take the information from him. Durant called and harassed Riff multiple times in this manner.

On June 24, Garcia received two packages that Durant had sent to her parents, which her parents forwarded to her. In one of the packages, Durant included a photocopy of his Department of Motor Vehicles (DMV) photograph and wrote, "Who is that big head[ed] guy? Enjoy[.]" (Capitalization omitted.) He drew an arrow pointing to his

picture and wrote, “Dumb stalker[.] Damn that’s how you feel huh? That breaks my heart.” (Capitalization omitted.)

On June 26, Durant came to Riff’s apartment and began speaking with a friend of Riff’s on the front porch. Riff walked outside and told Durant to leave and never come back. Riff walked back toward his front door, then turned back around to make sure Durant was leaving. As Riff turned toward him, Durant sucker-punched Riff in the mouth, knocking out one of his teeth and breaking another. Throughout this incident, Durant kept asking Riff for Garcia’s contact information. The same day, Riff discovered that his car had been vandalized, with its back window broken with a brick and the back door dented.

After this attack, Durant continued calling and texting Riff daily, demanding Garcia’s contact information and threatening Riff with violence if he did not comply. Riff received approximately 100 to 150 calls and texts within about one month and a half.

On July 6, Durant again came to Riff’s house. Riff exited his bedroom to find Durant already inside the apartment, despite Riff’s friend’s efforts to keep him out. Durant lunged at Riff, kicking him in the groin and punching him in the head multiple times. Riff fought back and pushed Durant out the door. Durant stayed outside Riff’s door for the next half hour, screaming for Garcia’s contact information. He did not leave until another friend of Riff’s arrived and physically forced him to leave.

Riff grew more and more afraid, both for his own safety and that of his teenage daughter, who visited every other weekend. He told Garcia about these events, and Garcia called the Los Angeles Police Department, who told her that Riff was the one who needed to file a complaint. Garcia also called Durant after one of the attacks, and Durant asked her, “Do you see what I have to do for you to call me?” Durant continued sending Garcia messages indicating he was resentful of Garcia’s continuing relationship with Riff. In one message, he wrote, “Just show me compassion like you show [Riff]. I’m so jealous of every man who [you] share memories daily with. I’d do anything.” On his Instagram account, Durant posted a picture of his hand, with a note reading, “Swollen from pounding on [Riff’s] head :-). So exhilarating and fun now for once I’m happy.”

On July 18, Riff's car was vandalized again, with all the windows smashed. Riff had not gone to the police earlier because of bad experiences he had had with the police in the past, but after this second incident of vandalism, he overcame his reluctance and called the police. Durant was ultimately arrested, and Los Angeles Police Department detectives interviewed him in jail. In the interview, Durant admitted that he had gone to Riff's apartment in frustration after Riff refused to give him Garcia's contact information, and claimed that Riff punched him. He also admitted that he went to Riff's apartment a second time and fought with him, and that he damaged the windows on Riff's truck.

In his trial testimony, Durant denied attacking Riff and disagreed with Garcia's description of the nature of their relationship. He said that he called Garcia after they broke up and told her he still loved her. Durant also said she contacted him via Instagram. He believed Garcia was sending him mixed signals, sometimes telling him not to contact her, but then contacting him several times herself. Durant admitted going to Riff's apartment, but denied fighting with him, except to resist when Riff attacked him. He claimed he did not break the windows on Riff's truck. Instead, Durant testified that he had been taking care of some children who broke the windows, and he told the police he had done it so that the children would not receive the blame. He admitted sending some of the social media messages, but denied others.

An information charged Durant with five offenses. On all counts, Riff was the only alleged victim. The charges were as follows: (count 2) stalking, in violation of Penal Code section 646.9, subdivision (a)¹; (count 3) assault by means likely to cause great bodily injury, in violation of section 245, subdivision (a)(4); (count 4) criminal threats, in violation of section 422, subdivision (a); (count 7) vandalism, in violation of section 594, subdivision (a); and (count 9) first-degree burglary with a person present in the residence, in violation of section 459. The information alleged further that Durant had suffered three prior strikes under the "Three Strikes" law (§§ 667, subs. (b)-(j), 1170.12), two prior serious felonies pursuant to section 667, subdivision (a)(1), and

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

five prison priors, pursuant to section 667.5, subdivision (b). A jury convicted Durant on all counts, with the exception that it found the allegation of great bodily injury with respect to count 3 not true. The court found true all the allegations of priors.

The court sentenced Durant to a total term of 74 years to life. The court calculated the sentence as follows: An indeterminate sentence of 35 years to life for count 4, including 25 years to life for the base offense, plus two five-year enhancements pursuant to section 667, subdivision (a)(1); an identical consecutive 35-years-to-life sentence for count 9; a consecutive four-year determinate sentence for count 3, consisting of the low term of two years, doubled pursuant to the Three Strikes law; a four-year sentence for count 2 stayed pursuant to section 654, consisting of the low term of two years, doubled pursuant to the Three Strikes law determinate term of four years; and a concurrent sentence of 180 days in county jail for the vandalism conviction in count 7.

DISCUSSION

Durant raises several issues on appeal. First, he contends that the trial court erred by failing to conduct a proper hearing on his motion to substitute counsel. Next, he argues that the trial court violated his rights to due process and a fair trial by allowing the jury to hear testimony regarding his nickname, which he argues the jury would have perceived as gang-related. Next, he contends that the trial court violated his constitutional rights by admitting into evidence the picture he mailed to Garcia with comments handwritten on it. Next, he contends that the trial court erred by allowing the jury to hear evidence of crimes or bad acts he committed against Garcia, when he was charged only with crimes against Riff. Finally, he contends that the trial court erred by refusing to instruct the jury on a self-defense theory on his assault charge. We affirm.

I. Marsden Hearing

Durant contends that the trial court erred by denying the motion he made after the jury returned its verdict for substitution of counsel pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). We are not persuaded.

“When, after trial, a defendant asks the trial court to appoint new counsel to prepare and present a motion for new trial on the ground of ineffective assistance of

counsel, the court must conduct a hearing to explore the reasons underlying the request. [Citations.] If the claim of inadequacy relates to courtroom events that the trial court observed, the court will generally be able to resolve the new trial motion without appointing new counsel for the defendant. [Citation.] If, on the other hand, the defendant's claim of inadequacy relates to matters that occurred outside the courtroom, and the defendant makes a 'colorable claim' of inadequacy of counsel, then the trial court may, in its discretion, appoint new counsel to assist the defendant in moving for a new trial." (*People v. Diaz* (1992) 3 Cal.4th 495, 573-574 (*Diaz*).)

After the jury returned its verdict, but before sentencing, Durant informed the court, "I want to have a *Marsden* motion." (Italics added.) The court excused the prosecution from the courtroom and held a hearing. Durant complained that his attorney failed to obtain exculpatory evidence on his behalf. He claimed that he had been upset with Riff not because Riff refused to give him Garcia's contact information, but rather because Riff had been selling drugs. According to Durant, he had communicated his feelings to Riff via text message, and Riff responded in a way that showed he was not afraid of Durant. Durant claimed that he had saved these messages on his computer, but his attorney had failed to subpoena them.

Durant's attorney acknowledged that Durant had asked him to obtain the text messages. Counsel said, "I made certain decisions based upon some things that I don't need to go into right now." He suggested that the court appoint a new counsel to determine if there was a basis for a motion for a new trial on grounds of ineffective assistance of counsel.

The trial court denied the motion, finding that there was no "breakdown in the attorney/client relationship such that [Durant's attorney] can't go forward with what's left on this trial." After the court denied the motion and Durant's later request to represent himself for the remainder of the trial, Durant voluntarily absented himself from the courtroom. The court then stated, "[W]e are going to go forward without [Durant.] [I]nasmuch as he was requesting in his comments a new trial based on the incompetence of counsel[, t]hat is denied." The court addressed Durant's attorney saying, "You made it

clear you made certain strategic decisions at the trial, and there's no grounds for a new trial."

The Attorney General contends that Durant has no basis to challenge the trial court's ruling because he never clearly stated during the hearing that he wanted a new attorney for the purpose of filing a motion for a new trial. The Attorney General notes that in *People v. Lee* (2002) 95 Cal.App.4th 772 (*Lee*), the court stated that a defendant's "[m]ere grumbling about his counsel's failure . . . is insufficient" to constitute a request for new counsel. (*Id.* at p. 780.) But the court in *Lee* went on to state that "the defendant need not file 'a proper and formal legal motion' " so long as he "express[es] 'at least some clear indication . . . that he wants a substitution of attorney.' " (*Ibid.*) By that standard, Durant did enough to request new counsel. Prior to the hearing, he stated unequivocally, "I want to have a *Marsden* motion." (Italics added.) During the hearing, the court asked him what he wanted, and he replied, "I'm asking for a fair trial, and obviously I can't do it with [my appointed counsel], so I need somebody that will do it." To require more specific language from Durant would disregard our Supreme Court's warning in *Marsden* that "[t]he semantics employed by a lay person in asserting a constitutional right should not be given undue weight in determining the protection to be accorded that right." (*Marsden, supra*, 2 Cal.3d at p. 124.)

Because Durant alleged that his attorney was incompetent with respect to events that occurred outside the courtroom, the trial court was required to determine whether he had raised a "colorable claim" of ineffective assistance of counsel, and if so, in its discretion appoint new counsel. (*Diaz, supra*, 3 Cal.4th at p. 574.) A colorable claim is one that "credibly establishes the *possibility* that his trial counsel failed to perform with reasonable competence and that, as a result, a determination more favorable to the defendant *might* have resulted in the absence of counsel's failings." (*People v. Stewart* (1985) 171 Cal.App.3d 388, 396 (*Stewart*).) In *People v. Smith* (1993) 6 Cal.4th 684, 696, our Supreme Court clarified that the "colorable claim" standard defined in *Stewart* for granting a motion to substitute counsel at the end of a trial is not substantively different from the standard for granting a *Marsden* motion at any other stage of trial. The

trial court's decision not to appoint new counsel "will not be overturned on appeal absent a clear abuse of . . . discretion." (*Ibid.*)

Notwithstanding Durant's arguments to the contrary, we hold that the trial court conducted an adequate hearing of Durant's claims and acted within its discretion in declining to appoint new counsel. Durant is correct that an attorney may provide ineffective assistance to his client by failing to "pursue diligently those leads indicating the existence of evidence favorable to the defense." (*In re Neely* (1993) 6 Cal.4th 901, 919.) Here, however, there was no evidence that Durant's attorney committed this type of error.

Durant's attorney readily acknowledged that Durant had asked him to investigate the cellular phone data. Counsel then stated, "I made certain decisions based upon some things that I don't need to go into right now." Although that answer is not a model of clarity, it was sufficient to establish that Durant had not made a colorable claim of ineffective assistance of counsel.² We infer from this answer that Durant's counsel had considered the matter and made a tactical decision not to investigate further or attempt to introduce any cellular phone data into evidence. " "[T]rial counsel's tactical decisions are accorded substantial deference." ' ' ' ' (*People v. Majors* (1998) 18 Cal.4th 385, 403.) Potential justification exists for counsel's decision not to obtain or introduce into evidence the cellular phone data. He might have determined that the data was impossible to recover. Alternatively, based on the other evidence of Durant's behavior with regard to texting and social media, counsel might have decided that the data on Durant's phone was more likely to be incriminating than exculpatory. Hence, this is not the type of exceptional case where reversal is appropriate on the basis of ineffective assistance of counsel on direct appeal because " " "the record . . . affirmatively disclose[s] the lack of a rational tactical purpose for the challenged act or omission." ' ' ' ' (*Ibid.*) Because Durant failed to present a colorable claim of ineffective assistance of counsel, the trial court

² For this reason, we reject Durant's contention that we must remand the case to the trial court for a further hearing. (See, e.g., *People v. Reed* (2010) 183 Cal.App.4th 1137, 1149-1150.)

acted within its discretion by denying the *Marsden* motion. (See *Diaz, supra*, 3 Cal.4th at pp. 573-574.)

II. *Admission of Durant's Nickname*

Durant contends that the trial court erred by allowing the prosecution to introduce evidence that he was known by the nickname “Stranger.” According to Durant, the admission of this nickname prejudiced him because jurors would have inferred from it that he was a gang member, and would have convicted him because of his gang affiliation rather than any evidence relevant to the case. He contends that the court erred because the evidence was irrelevant and prejudicial, and that the error violated his Fifth and Fourteenth Amendment rights to due process and a fair trial. We disagree.

Prior to trial, Durant filed a motion in limine seeking to exclude evidence of his nickname on the ground that it was more prejudicial than probative. (See Evid. Code, § 352.) The record does not indicate whether the trial court ruled on this motion, but on at least two occasions, witnesses referred to Durant as Stranger during the trial.

The first mention of Durant’s nickname came near the beginning of Riff’s testimony. The prosecutor was asking Riff about how he came to know Durant, and asked, “What was the name of the person Ms. Garcia told you about?” Riff answered, “His nickname is Stranger. His name is Arman Durant.” The prosecutor continued, “And did you know Stranger or Arman Durant?” Riff answered, “I heard about him through [Garcia] and other people in the neighborhood.” The prosecutor asked, “What did Ms. Garcia tell you about—did she call him Stranger or Arman?” Riff answered, “Both.”

Durant’s nickname came up again during Garcia’s testimony. The prosecutor asked Garcia to read from a message she received from Durant via Twitter. Garcia testified that Durant wrote to her, “ ‘If you knew [Riff] then you’d un[der]stand where I’m coming f[r]om.’ . . . ‘If not shu[t] yo[u]r mutha fuckin mouth.’ ” Garcia continued describing the message: “And at the bottom it says . . . ‘CSTG Stranger.’ ” The prosecutor asked, “Okay. Without—I don’t want to discuss the CSTG. Does the word

Stranger have any significance to you?” Garcia answered, “Yes.” The prosecutor asked, “Is that a nickname the defendant had?” Garcia answered, “Correct.”

Relevant evidence is “evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) The trial court lacks discretion to admit irrelevant evidence. (*People v. Crittenden* (1994) 9 Cal.4th 83, 132.) Under Evidence Code section 352, “[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” We review the trial court’s decisions regarding the admission of evidence for abuse of discretion. (*People v. Chism* (2014) 58 Cal.4th 1266, 1291.)

Durant argues that the evidence regarding his nickname was irrelevant because his identity was not a disputed fact at trial. But the parties disputed whether Durant sent the social media messages the prosecution attributed to him. The evidence regarding his nickname was relevant to show that Garcia was the author of the message signed “Stranger.”

Durant also argues that the admission of his nickname should have been excluded under Evidence Code section 352 because it was substantially more prejudicial than probative because the jury would have inferred from the nickname that he was a gang member. But the name Stranger in itself has no obvious gang-related connotation, and Durant provides no evidence to show that the jury would have interpreted it as suggesting a gang affiliation, rather than simply as an ordinary nickname. It is possible that the initials CSTG, which preceded the name Stranger in Durant’s signature, have some kind of gang significance, but Durant does not explain what this could be, and the prosecutor was careful not to ask Garcia about its meaning. The trial court acted within its discretion by allowing the testimony regarding the nickname.

III. *The DMV Photograph*

Durant contends the trial court erred by admitting into evidence a picture of himself that he sent to Garcia. The picture was a photo receipt from the DMV. Garcia identified the handwriting underneath the picture as Durant's. Durant wrote, "Who is that big head[ed] guy? Enjoy[.] Dumb stalker[.] Damn that's how you feel huh? That breaks my heart." (Capitalization omitted.) Durant drew an arrow from the words "dumb stalker" (capitalization omitted) to his picture, and he signed the note underneath the picture. Garcia testified that she received the photograph in one of two packages that Durant sent to her near the end of June 2013, together with some makeup and \$80 in cash.

In closing arguments, the prosecutor referred to the photograph as follows: "[I]t's always helpful when we get even better evidence. In the defendant's own handwriting. Isn't this curious that you would send somebody your photo receipt for your DMV photo[?] . . . As an afterthought, almost like a P.S., he writes dumb stalker, smiley face, pointing to himself. Why is that significant? People know what they are. People know—I know my character, I know my weaknesses, I know my strengths, so does Mr. Durant. And one of the things he knows about himself is exactly why your decision on this stalking count is a no-brainer. He himself describes himself as a stalker."

Durant argues that this evidence should have been excluded because it was irrelevant, and even if relevant, it was substantially more prejudicial than probative. (Evid. Code., §§ 210, 352; *People v. Crittenden*, *supra*, 9 Cal.4th at p. 132.) He points out that Durant was charged with stalking and assaulting Riff, not Garcia. According to Durant, the photograph may have inflamed the jury to convict him because he stalked Garcia.

For purposes of Evidence Code section 352, prejudicial evidence is evidence that " " "uniquely tends to evoke an emotional bias against . . . [one party] as an individual and . . . has very little effect on the issues." ' ' ' (*People v. Harlan* (1990) 222 Cal.App.3d 439, 445.) Or, stated in other terms, prejudicial evidence is evidence that might cause the jury to " " " 'prejudg[e]' a person or cause on the basis of extraneous factors." ' ' "

(*People v. Harris* (1998) 60 Cal.App.4th 727, 737.) We review the trial court's decisions regarding the admission of evidence under Evidence Code section 352 for abuse of discretion. (*People v. Lee* (2011) 51 Cal.4th 620, 643.) A trial court acts within its discretion when its decision is free from “ ‘ ‘ ‘arbitrary determination, capricious disposition or whimsical thinking.” ’ ’ ’ (*People v. Mullens* (2004) 119 Cal.App.4th 648, 658.)

Under that deferential standard, reversal is not warranted here. The trial court found that the photograph was relevant to prove Durant's motive for stalking and attacking Riff, and we agree. There was relatively little physical evidence in this case, and Durant and Riff gave starkly different accounts of what happened between them. The DMV photograph was important to show that Durant was obsessed with Garcia, and that Garcia's and Riff's accounts of their interactions with Durant were more credible than Durant's. Although it served a similar function to other evidence in the case, it was not simply cumulative. (See *People v. Holford* (2012) 203 Cal.App.4th 155, 178, fn. 14 [evidence of similar subject matter is not cumulative if it is of greater probative value].) The DMV photograph included Durant's own handwriting, which Garcia identified, and it showed that Durant was so intent on reaching Garcia that he mailed a package to her parents in the hopes that they would forward it to her. Durant is correct that the evidence had the potential to prejudice him, in that it might have encouraged the jury to convict him because of his actions toward Garcia, rather than the crimes with which he was charged. But the trial court admonished the jury not to use the evidence in that manner. Moreover, under Evidence Code section 352, the mere potential for prejudice is not sufficient to warrant excluding evidence. The court may exclude evidence only if the potential for prejudice “substantially outweigh[s]” its probative value. (*Ibid.*) The trial court acted within its discretion in determining that the potential prejudice was not so great as to require excluding the evidence.

IV. *Evidence of Uncharged Bad Acts*

Durant contends that the trial court erred by allowing evidence of bad acts he committed against Garcia, even though the information charged Durant only with crimes

against Riff. According to Durant, the admission of this evidence was in violation of Evidence Code section 1101, subdivision (a), under which the prosecution may not introduce evidence of a defendant's bad character in order to prove that he acted in accordance with that character in committing the crimes with which he was charged. He also contends that the evidence of his actions toward Garcia was substantially more prejudicial than probative, and that the court should have excluded it under Evidence Code section 352. Durant contends that the error amounted to a violation of his Fifth and Fourteenth Amendment rights to due process and a fair trial.

Durant objects to several instances in which prosecution witnesses referred to bad acts he committed against Garcia and others. Riff testified that Garcia told him that Durant "was continuously harassing her nonstop, writing her, following her around, harassing people physically that she was close to, knocking out ex[-]boyfriends." The court allowed this testimony, but cautioned the jury that "you can't . . . consider [Riff's testimony] for whether or not it actually happened. The only purpose that you can consider that evidence is for the effect that it had on Mr. Riff on whether or not he believed it and whether or not the—one of the charges, or two of the charges in this case require sustained fear. So it goes to whether or not the fear was present in Mr. Riff."

Later, Garcia testified that, after she broke up with Durant by telephone, "the whole day, probably for about seven hours, he was on a bicycle riding up and down my street. I was not home. My neighbors called me and told me that he was there, so I didn't go home." The trial court overruled Durant's relevance objection, finding that "there is relevance as to how [Durant] reacted after the relationship ended to show his motive for the charges in this case." Shortly thereafter, the prosecutor asked Garcia how Durant contacted her after the breakup. She answered, "He tried to call me, he texted me. He was shortly arrested after—" The trial court granted Durant's motion to strike the comment that he had been arrested.

Under Evidence Code, section 1101, subdivision (a), "evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when

offered to prove his or her conduct on a specified occasion.” Evidence of a defendant’s uncharged bad acts may be admissible “when relevant to prove some fact (such as motive . . .) other than his or her disposition to commit such an act.” (Evid. Code, § 1101, subd. (b).) Even when evidence of other bad acts is relevant to prove a fact other than the defendant’s propensity to commit crimes, its admissibility is still subject to the limitations of Evidence Code section 352. Evidence of uncharged bad acts “always involves the risk of serious prejudice,” and courts must carefully weigh the probative value of the evidence against this potential for prejudice. (*People v. Griffin* (1967) 66 Cal.2d 459, 466.) We review a court’s decision regarding the admission of evidence for abuse of discretion. (*People v. Chism, supra*, 58 Cal.4th at p. 1291.)

We disagree with Durant’s contention that the evidence was admitted in violation of Evidence Code section 1101, subdivision (a). As with the DMV photograph he sent to Garcia, Riff’s and Garcia’s testimony about Durant’s actions against Garcia, and his hostility toward Garcia’s friends, was relevant to Durant’s motive for attacking Riff. (See Evid. Code, § 1101, subd. (b).)

We also disagree with Durant’s claims that the trial court should have excluded this evidence under Evidence Code section 352, and that it was insufficient to admonish the jury regarding the use of the testimony. Without testimony regarding Durant’s obsessive behavior with regard to Garcia, the jury might not have believed that Durant would threaten, harass, and attack Riff, a man he had never previously met. At some point, the descriptions of Durant’s obsessions would have become cumulative, but the prosecution needed to elicit multiple examples in order to establish the extent of Durant’s fixation. Although there was the potential for prejudice to Riff, that potential did not “substantially outweigh[]” the probative value of the evidence. (Evid. Code, § 352.)

Nor was there undue prejudice in Garcia’s reference to Durant’s arrest. First, the trial court ordered the jury to disregard that statement. “A jury will generally be presumed to have followed an admonition to disregard improper evidence or comments, as ‘[i]t is only in the exceptional case that “the improper subject matter is of such a character that its effect . . . cannot be removed by the court’s admonitions.” ’ ” (*People v.*

Pitts (1990) 223 Cal.App.3d 606, 692.) In addition, Garcia's testimony gave no specific information regarding the arrest, either its timing or the charges against him. Although this arrest was apparently not related to Durant's harassment of Riff, the jury would not have known that, and would not necessarily have concluded that Durant had been arrested on other charges. Under the deferential standard for decisions regarding the admission of evidence, reversal is not required. (See *People v. Holford*, *supra*, 203 Cal.App.4th at pp. 167-168.)

V. *Self-Defense Instruction*

Durant contends that the trial court made a reversible error by refusing to give the jury a self-defense instruction on the charge of assault by means likely to cause great bodily injury (count 3). We disagree.

The trial court is obligated to instruct the jury regarding any defense supported by substantial evidence. (*People v. Watson* (2000) 22 Cal.4th 220, 222.) “ “ “ “Substantial evidence is evidence sufficient to “deserve consideration by the jury,” that is, evidence that a reasonable jury could find persuasive.’ ” ’ ” (*People v. Valdez* (2004) 32 Cal.4th 73, 116.) In determining the sufficiency of the evidence, the trial court does not weigh the credibility of witnesses, and must resolve all doubts in favor of the accused. (*People v. Ramirez* (1990) 50 Cal.3d 1158, 1180.)

The assault charge resulted from Durant's actions on July 6, 2013. Riff testified that, on that day, he came out of his bathroom to discover Durant in his living room wearing steel-toed boots. A female friend of Riff's named Ana told Durant to leave, but he pushed past her and lunged at Riff, kicked him in the genitals, and punched him in the back of the head several times without saying a word to him. Riff managed to stay on his feet, held onto Durant's throat, and slowly forced him out the door.

Durant gave a different account of this encounter when he testified on his own behalf. He stated that he went to Riff's apartment to confront Ana about some money that had gone missing. Durant and Ana argued, and Ana jumped on Durant and ripped his shirt off. Riff joined in and tried to attack Durant, who left and ran down the stairs. According to Durant, he did not try to strike or punch Riff, but pushed Riff off of him.

Riff had an object in his hand that Durant thought might be an ice pick. Durant managed to block it, got away from Riff and Ana, and ran away.

The only other evidence of this confrontation came from the recording of a police interview with Durant, which the prosecution played for the jury. In that conversation, Durant said that Riff “punched me and I’m trying to hold him off and get him off me or what [not].” An officer asked, “But he punched you? You hit him (unintelligible).” Durant replied, “Yeah, and then that’s when [I just] (unintelligible) [ran] downstairs.”

We review an instructional error for prejudice under the *Watson*³ standard, reversing only if “it appears reasonably probable that the defendant would have achieved a more favorable result had the error not occurred.” (*People v. Villanueva* (2008) 169 Cal.App.4th 41, 53.)⁴ Under this standard, if there was any error in failing to give the self-defense instruction, it was harmless. There was overwhelming evidence that Durant traveled to Riff’s house and instigated the fight because he was angry with Riff for refusing to provide Garcia’s contact information. In addition to Riff’s own testimony, the prosecution also introduced social media posts in which Durant bragged about beating up Riff, describing it as “exhil[a]rating and fun.” Furthermore, Durant’s own testimony at trial was inconsistent with a self-defense theory, in that he claimed he did not fight back against Riff, but only pushed Riff off of him and tried to block his attacks. The only evidence of self-defense came in the form of an ambiguous audio recording of a police station interview in which Durant claimed that Riff attacked him, but appeared to

³ (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

⁴ Durant contends that the trial court violated his constitutional rights by refusing to give the instruction, and that we should review the case under the more stringent standard established by *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*). (See *People v. Mayberry* (1975) 15 Cal.3d 143, 157-158.) In cases involving instructions on affirmative defenses, however, courts have applied the *Chapman* standard only where “the failure to instruct deprived the defendant of his right to present a defense and so infected the entire trial that it violated due process and the right to a fair trial.” (*People v. Watt* (2014) 229 Cal.App.4th 1215, 1219 (*Watt*).) That was not true in this case. The court in *Watt* surveyed the case law and noted that all published California cases concluded, as do we, that “the *Watson* test applies.” (*Ibid.*)

acknowledge that he hit Riff as well. In light of this evidence, any error in refusing the instruction did not prejudice Durant.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.